

STATEMENT OF ANGELA B. STYLES
ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY
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Chairman Davis, Congressman Waxman, and Members of the Committee, I appreciate the opportunity to appear before you today to provide an update on our competitive sourcing initiative and discuss the recently released revisions to OMB Circular A-76. Two years ago, almost to the day, I outlined for your Technology and Procurement Policy Subcommittee the Administration's vision of a market-based government that embraces the ideals of competition, innovation, and choice. I am pleased to say that we have made significant progress since that June 2001 hearing towards fulfilling our vision and transforming agencies' mindset from one that resists competition to one that welcomes the value competition generates. Of particular note, OMB has:

- secured the commitment of senior agency officials to increase the number of government-performed commercial activities that are subject to the dynamics of public-private competition;
- improved the processes agencies use to inventory their commercial and inherently governmental activities and to identify commercial activities suitable for competition with the private sector;
- worked closely with federal managers in developing customized competition plans to reflect differing agency missions, priorities, and workforce mixes and

enable the institutionalization of public-private competition in a responsible and reasonable manner;

- strengthened policies and procedures for conducting public-private competitions, so agencies are effectively positioned to select the best public or private provider that can help them meet their needs; and
- created scorecards to track agency progress and trigger adjustments when results fall short of expectations.

I am particularly gratified by the improvements we have made to the policies and procedures for conducting public-private competitions. These changes, which are reflected in the recently issued revisions to Circular A-76, give federal managers the means to bring about improved program performance and lower costs for their agencies. Today, I would like to discuss some of the market-based, results-oriented changes we have made to Circular A-76. I will then briefly mention the additional management steps we are taking to ensure the success of competitive sourcing over the longer term.

Revisions to Circular A-76

Despite the commitment of our federal managers, overall use of competitive sourcing has been weak. This underutilization is not surprising. For a long time, the acquisition community has argued that the benefit derived from public-private competitions could be much greater if performance decisions were made within more reasonable timeframes, processes were more accommodating to agency needs, and greater attention was given to holding sources accountable for their performance. To address these and other shortcomings, Circular A-76 has been revised to provide a number of results-driven features. Let me highlight a few of them for you.

1. *Time limits for completing competitions.* Timeframe standards have been incorporated into the revised Circular to instill greater confidence that agencies will follow through on their plans and ensure the benefits of competition are realized. Under the revised Circular, a standard competition must generally be conducted within a 12-month period: beginning on the date the competition is publicly announced and ending on the date a performance decision is made. A "standard competition" is the general competitive process required by the revised Circular when an agency selects a provider based on formal offers or tenders submitted in response to an agency solicitation. The revised Circular provides that the agency's competitive sourcing official (CSO) -- i.e., the official within the agency responsible for implementing the Circular -- may extend the 12-month period by 6 months with notification to OMB. Streamlined competitions, which I will describe in a moment, must generally be completed within a 90-day period.

For added transparency, agencies will be required to publicly announce the beginning of competitions, performance decisions made at the end of a competition, and any cancellation of an announced competition. Announcements must be made through FedBizOpps. Announcements of competition and performance decisions must also be publicized locally.

I should emphasize that the new competition timeframes are not intended to truncate planning. Effective agency planning is a critical prerequisite for sound sourcing decisions and is especially important for agencies that lack experience in conducting public-private competitions. OMB deliberately structured the Circular so that timeframes, for either standard or streamlined competitions, will not begin to run until preliminary planning has been completed.

2. *More accommodating processes.* The revamped Circular is designed to better accommodate agency needs in the conduct of source selections. Options available to the agencies include the following:

- Expanded opportunities to consider best value. Under the revised Circular, agencies have more leeway to take non-cost factors into account during source selection. For example, an agency may conduct a phased evaluation source selection process to consider alternative performance levels that sources may wish to propose. If non-cost factors are likely to play a significant role in the selection decision, an agency may, with certain parameters, conduct a tradeoff source selection process similar to those authorized by the Federal Acquisition Regulation (FAR). The Circular limits use of tradeoffs to: (1) information technology activities, (2) contracted commercial activities, (3) new requirements, (4) segregable expansions, or (5) activities approved by the CSO before public announcement, with notification to OMB.
- Use of streamlined competitions. The prior Circular authorized a "streamlined cost-comparison process." The revised Circular builds on this foundation to create a more versatile process so that agencies may efficiently capture the benefits of public-private competition without the burdens associated with past processes. For activities performed by 65 or fewer FTEs, the new streamlined competition gives agencies considerable latitude to make cost-effective choices. For example, when determining an estimated contract price for performing the activity with a private sector source, an agency may use documented market research or solicit proposals in accordance with the FAR. Agencies may use streamlined acquisition tools, such as a Multiple Award Schedules contract to obtain proposals from the private sector. Irrespective of the

tools used to compare the cost of performance between the private and public sectors, agencies must document that their decisions are *cost-effective* before engaging sources to provide services. The Circular provides a streamlined form for agencies to memorialize their business decisions in a simple and straightforward manner.

In light of the significant efficiencies offered by the new streamlined competition process and the general goal of relying on public-private competitions, OMB has eliminated the practice of direct conversions. This change is intended to address the criticism that direct conversions encourage agencies to go directly to contract as a matter of administrative convenience, even where a more efficient, cost-effective government organization could be the better alternative. The new streamlined competition process retains the best features of direct conversions -- namely, significant flexibility and minimal burden -- and combines them with the opportunity to make better economic decisions by considering the abilities of sources from both sectors.

Of course, streamlined procedures, like other parts of the Circular, must be read in conjunction with existing law. Consider, for example, a situation where an agency need could be met by a service that the agency, if it chose to contract with the private sector, would be required to procure from a nonprofit agency employing people with severe disabilities under the Javits-Wagner- O'Day (JWOD) Act. In this case, the nonprofit agency would be the sole representative of the private sector in the agency's comparison of costs between the public and private sectors. While an agency could not directly convert activities to performance by a nonprofit JWOD agency under the revised Circular, the Circular's streamlined competition form would provide an easy

method of demonstrating that the nonprofit could provide the service in a more cost-effective manner than the government provider and at a fair market price, as the law expects when an agency contracts with a nonprofit JWOD agency.

- Consideration of innovative alternative practices. OMB recognizes that the nature of service delivery is constantly changing and our processes must be able to meet taxpayer needs in this dynamic environment. We must always be on the lookout for better ways of carrying out federal missions. To encourage innovation and continual improvement, the revised Circular provides a process by which agencies, with OMB's prior written approval, may deviate from the processes prescribed in the Circular.

While we must be forward thinking, we must also ensure that deviations are used only when there is good reason to believe significant benefit may be offered and when alternative processes are transparent and impartial. OMB believes the new standard and streamlined competition processes should effectively accommodate agency needs for the vast majority of public-private competitions and will carefully review deviation requests to determine if they are justified.

3. *Post-competition accountability.* During the revision process, we heard numerous complaints regarding weaknesses in post-competition oversight. Among other things, the old Circular required post-competition reviews only for 20 percent of the functions performed by the government following a cost comparison. As a result, even where competition has been used to transform a public provider into a high-value service provider, insufficient steps have been taken to ensure this potential translates into positive results.

Under the revised Circular, agencies will be expected to implement a quality assurance surveillance plan and track execution of both standard and streamlined competitions in a government management information system. Irrespective of whether the service provider is from the public or private sector, agencies will be expected to record the actual cost of performance and collect performance information that may be considered in future competitions.

4. *Balanced and fair practices.* If we are to achieve good results from public-private competitions, we must facilitate the type of robust participation that will bring market pressures to bear, and embrace even-handed practices that result in performance by the best source, irrespective of the sector. The revised Circular seeks to improve public trust in sourcing decisions by reinforcing mechanisms of transparency, fairness, and integrity. In doing so, we have paid particular attention to the new features of the Circular, hoping to reassure critics that changes are intended to improve results, not weaken a source's ability to demonstrate its capabilities. These safeguards include the following.

- Establishment of firewalls. The revised Circular establishes new rules to avoid the appearance of a conflict of interest. In particular, the revised Circular separates the team formed to write the performance work statement (PWS) from the team formed to develop the most efficient organization (MEO) -- i.e., the staffing plan that will form the foundation of the agency's tender. In addition, the MEO team, directly affected personnel and their representatives, and any individual with knowledge of the MEO or agency cost estimate in the agency tender will not be permitted to be advisors to, or members of, the source selection evaluation board.

- Assurance that decisions are cost-effective. While agencies will have greater leeway to consider non-cost factors in standard competitions and more options for comparing public and private sector performance in a streamlined competition, the Circular has been designed to ensure that cost remains a dominant consideration in all agency decisions. For example, the specific weight given to cost or price must be at least equal to all other evaluation factors combined in a tradeoff source selection unless quantifiable performance measures can be used to assess value and can be independently evaluated.

With respect to streamlined competitions, the revised Circular incorporates mechanisms to ensure that agencies act as responsible stewards. First, unlike the current procedures for streamlined cost comparisons, the revised Circular requires agencies to publicly announce both the start of a streamlined competition and the performance decision made by the agency. The notice announcing the initiation of a competition must include, among other things, the activity being competed, incumbent service providers, number of government personnel performing the activity, names of certain competition officials, and the projected end date of the competition. Second, as I mentioned a moment ago, agencies must document cost calculations and comparisons on a standardized streamlined competition form. The official who documents the cost estimate for agency performance must be different from the one who documents cost estimates for performance by either the private sector or a public reimbursable source. Finally, the agency must certify that the performance decision is cost-effective.

- Challenges. The revised Circular authorizes challenges to standard competitions by directly interested parties. Directly interested parties may challenge: (1) a solicitation, (2) the cancellation of a solicitation, (3) a determination to exclude a tender or offer from a standard competition, (4) a performance decision, including, but not limited to, compliance with the costing provisions of the Circular and other elements in an agency's evaluation of offers and tenders, or (5) a termination or cancellation of a contractor or letter of obligation where there is an allegation that such action is based on improprieties concerning the performance decision. Rather than perpetuating a separate A-76 administrative process, agencies will be expected to rely on the agency protest process set forth in the FAR.

Even before committing to conduct a competition, agencies will be held accountable for making rationally-based, good faith decisions. In preparing inventories of their activities, agencies will now be required to prepare written justifications if the agency concludes that a commercial activity is eligible but not appropriate for private sector performance. (In agencies' initial inventory submissions to OMB for fiscal year 2002, commercial activities exempt from competition outnumbered those subject to competition.) These justifications will be available to the public, upon request. Interested parties will be able to challenge the classification of an activity as inherently governmental or commercial. For the first time, interested parties will also be allowed to challenge the rationale (i.e., "reason code") given for government performance of a commercial activity or the determination that a commercial activity is suitable for a streamlined or standard competition.

Ensuring the long-term success of competitive sourcing

Mr. Chairman, as you can see, OMB has taken significant steps to improve the processes agencies use for determining whether a commercial activity will be performed by a public or private source. While these changes should make public-private competitions more manageable and effective, OMB recognizes that better guidance is only one ingredient for success. Agencies need a knowledgeable and committed management support structure to implement the Circular if competitive sourcing is to become an institutional force for better program performance over the long term. For this reason, we are taking a number of actions to make sure agencies have the necessary support structures in place.

First, we are requiring agencies to establish a program office that will be responsible for the daily implementation and enforcement of the Circular. Effective oversight will serve to enhance communications and facilitate sharing of experiences within the agency so agencies may reinforce their successes and make adjustments where shortfalls occur. This type of communication may be especially helpful to government providers, many of whom have told us they have the capability to be highly competitive but lack the private sector's insight and experience in competing for work.

Second, the Federal Acquisition Council (FAC) has created a working group to address common agency needs. Last week, for example, the working group hosted a government-wide conference to acclimate agencies to the principles and new processes of the revised Circular. A number of private consultants participated on a panel to offer their ideas on effective planning. In the coming months, the working group will assist in

facilitating the posting of lessons learned and best practices on *SHARE A-76!*, a management system used to disseminate knowledge, information, and experiences about public-private competitions. Through *SHARE A-76!*, agencies will be able to routinely use current experiences to inform and improve competition practices and decision making. The working group's efforts, like others sponsored by the FAC, should help agencies to better understand and successfully implement the Administration's vision for a market-based government.

Third, OMB intends to meet with managers at the "scorecard" agencies over the coming months to understand what, if any, agency-unique challenges management faces and how we can help them in meeting these challenges. The faster challenges are identified and addressed, the sooner agencies will be in a position to take routine advantage of the improved competition processes and the benefits they will generate. To determine if the initiative is taking hold, we will look behind the competition plans for evidence of sound strategic planning, quality and timely competitions, and the like. These are important indicia of the likely long-term success of competitive sourcing.

Conclusion

While there is a certain comfort level in maintaining the status quo, our taxpayers simply cannot afford -- nor should they be asked to support -- a system that operates at an unnecessarily high cost because many of its commercial activities are performed by agencies without the benefit of competition. For this reason, the Administration has called upon agencies to transform their business practices and increase the amount of government-performed commercial activities that are subject to competition. In doing so,

we have provided tools for meeting this objective in a responsible and fair manner. I appreciate the Committee's ongoing interest in competitive sourcing and hope the acquisition community will give these tools a reasonable chance to take hold as we work together to bring lasting improvements in the performance of government.

This concludes my prepared statement. I would be pleased to answer any questions you may have.